

REMARKS

Introduction

Applicants acknowledge receipt of the Office Action dated December 23, 2008. Claims 1-19 are pending. Claims 3-4 and 7-12 stand withdrawn. Applicants reserve the right to pursue the withdrawn claims through one or more divisional applications. Applicants hereby amend claims 14 and 15. No new matter is introduced, rather, the claims are amended to remove multiple dependency.

Rejection Under 35 U.S.C. §102

The Examiner rejects claims 1, 14, and 18 under 35 U.S.C. §102(b) as being anticipated by Schapira et al. (U.S. Patent No. 5,695,773). The Examiner contends that Schapira et al. teach a phytosanitary composition comprising the combination of an oxynil and at least one active substance. The Examiner specifically points out Example 7, which describes the use of bromoxynil octanoate and primiphos-methyl, and Example 9, which discloses a method of application based on ioxynil octanoate and λ -cyhalothrin.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). In the instant case, Schapira et al. fail to disclose each and every element of claims 1, 14, and 18 because Schapira et al. fail to disclose a 4-hydroxyphenylpyruvate dioxygenase (HPPD) inhibiting herbicide.

Schapira et al. disclose a phytosanitary composition containing a combination of an oxynil and at least one substance selected from the group consisting of herbicides, insecticides, fungicides, growth regulators, and/or pesticides, with reference to the Shapira et al. Abstract. Schapira et al. teach that the term "oxynil" is understood to apply generally to hydroxybenzonitriles, including 4-hydroxy-3,5-dibromobenzonitrile (bromoxynil) and 4-hydroxy-3,5-diiodobenzonitrile (ioxynil), their salts and their esters (see column 1, lines 15-19). The oxynil compounds disclosed by Schapira et al. are **not** HPPD-inhibiting herbicides. Rather, these oxynil compounds are photosystem II (PS-II) inhibitors, as is appreciated by those skilled in the art.

Schapira et al. fail to expressly or inherently describe each and every element as set forth in claims 1, 14, and 18. Applicants request reconsideration and withdrawal of the anticipation rejection.

Rejection Under 35 U.S.C. §103

The Examiner rejects claims 1-2 and 13-19 under 35 U.S.C. §103(b) as being unpatentable over Hopkinson et al. (U.S. Patent No. 6,746,988). The Examiner contends Hopkinson et al. teach the combination of the instant agrochemical actives in making improved chemical and physical compositions. The Examiner states:

...it would have been obvious to one of ordinary skill in the art to make a composition with the instant components so as to achieve an enhanced stable composition for improved application to a desired area and for better preparation of commercial products in the agricultural history.

See page 5, lines 3-6.

Hopkinson et al. relates to a surfactant system for agriculturally active compounds. Hopkinson et al. define the term "agriculturally active compound" broadly (see column 7, lines 37-42). While herbicides and insecticides are included within this broad definition of "agriculturally active compounds," the term also includes miticides, bacteriocides, algacides, fungicides, and nematocides. Applicants note that the herbicide boiler plate in the Hopkinson et al. specification includes over 150 examples of herbicides, one of which is an HPPD inhibitor, namely mesotrione. Nevertheless, the agricultural compositions encompass a vast number of possible combinations of "agriculturally active ingredients". The Examiner contends that Hopkinson et al. is "fairly suggestive" of the presently claimed invention, namely a combination of an HPPD inhibitor and one or more insecticide. Applicants respectfully disagree.

The present invention relates to a pesticidally active combination comprising an HPPD-inhibiting herbicide in the form of an agrochemically acceptable salt and an insecticide. While Hopkinson et al. may envision a surfactant system comprising more than one "agriculturally active compounds," one of ordinary skill in the art would conclude, upon reading Hopkinson et al., that only systems comprising "agricultural active compounds" of the same class are actually envisioned. The examples provided in Hopkinson et al. relate only to systems comprising one or more herbicides and/or herbicide safeners (see claims 16-20). Hopkinson et al. is not at all suggestive of systems comprising agriculturally active ingredients in different classes. Thus, Hopkinson et al. does not teach or suggest a pesticidally active combination comprising a herbicide and an insecticide, let alone an HPPD-inhibiting herbicide in the form of an agrochemically acceptable salt and an insecticide. The latter clearly represents a substantial selection over the largely generic disclosure of Hopkinson et al. Hopkinson et al. is not fairly suggestive of the instantly claimed pesticidally active combination.


In order to arrive at such a specific selection as currently claimed, a significant alteration of the Hopkinson et al. reference is required. Upon an ordinary reading, one of ordinary skill would not have been led to or motivated to select an HPPD inhibiting herbicide, such as mesotrione, a salt thereof, and insecticide from all other agriculturally active compounds mentioned in specification. Accordingly, the instantly claimed combination of HPPD-inhibiting herbicide in the form of an agrochemically acceptable salt with an insecticide is not disclosed or even remotely suggested by Hopkinson et al. Reconsideration and withdrawal of the § 103 rejection are respectfully requested.

CONCLUSION

Applicant believes the claims are in condition for allowance. If there are any questions regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated, since this should expedite the prosecution of the application for all concerned.

Respectfully submitted,

Date: April 21, 2009
Attorney Docket: S19996 1270US


Mark D. Jenkins
Reg. No. 59,566
Attorney for Applicant
Womble Carlyle Sandridge & Rice, PLLC
Post Office Box 7037
Atlanta, Georgia 30357-0037
Telephone: (919) 484-2317
Facsimile: (919) 484-2096
Customer No.: 26158